

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CAPITAL FUNDING, LLC,

Plaintiff/Counterclaim Defendant,

v.

CRANSTON APARTMENTS, LLC,
MENACHEM TRESS, AND ELIMELECH
TRESS,

Defendants/Counterclaim Plaintiffs.

C.A. No. 1:24-cv-00857-RGA

CONSOLIDATED

Capital Funding, LLC,

Plaintiff/Counterclaim Defendant,

v.

GALLOWAY APARTMENTS GEM, LLC,
MENACHEM TRESS and ELIMELECH
TRESS

Defendants/Counterclaim Plaintiffs.

C.A. No. 1:24-cv-00871-RGA

CONSOLIDATED

**STIPULATION AND [PROPOSED] ORDER
DISMISSING THESE ACTIONS**

WHEREAS, on or about June 21, 2024, Plaintiff Capital Funding (“Capital Funding”) filed three separate and distinct complaints against Defendant Cranston Apartments LLC (“Cranston”) in the state courts for the State of Delaware. Specifically, Capital Funding filed its action for the appointment of a receiver in the Delaware Court of Chancery, and Capital Funding also filed separate actions for *in*

rem mortgage foreclosure on the mortgage securing real property located at 3310 and 3314 Old Capital Trail, Wilmington, Delaware 19808 (the “Cranston Property”) and breach of promissory note in the Delaware Superior Court.

WHEREAS, on July 23, 2024, Cranston removed all three cases to the U.S. District Court for the District of Delaware (collectively, the “Cranston Borrower Actions”), which remain pending at C.A. Nos. 24-857, 24-858, and 24-860.

WHEREAS, on or about August 23, 2024, Capital Funding filed a complaint against Menachem Tress and Elimelech Tress (collectively, the “Guarantors”) in the U.S. District Court for the District of Delaware for breach of the Cranston Guaranty (the “Cranston Guaranty Action”), which remains pending at: C.A. No. 24-971.

WHEREAS, on August 27, 2024, the U.S. District Court for the District of Delaware (the “Court”) consolidated the Cranston Borrower Actions and Cranston Guaranty Action, which remain pending at C.A. No. 24-857-RGA (the “Cranston Actions”).

WHEREAS, on or about June 21, 2024, Capital Funding filed three separate and distinct complaints against Galloway Apartments GEM LLC (“Galloway”) in the state courts for the State of Delaware. Specifically, Capital Funding filed its action for the appointment of a receiver in the Delaware Court of Chancery, and Capital Funding also filed separate actions for *in rem* mortgage foreclosure on the mortgage securing real property at 400 South Dupont Highway, New Castle,

Delaware 19720 and breach of promissory note in the Delaware Superior Court (collectively, the “Galloway Borrower Actions”).

WHEREAS, on or about July 11, 2024, Capital Funding filed a complaint against the Guarantors in the Delaware Superior Court for breach of the Galloway Guaranty (the “Galloway Guaranty Action”).

WHEREAS, on July 30, 2024, Cranston Borrower filed answers in the Cranston Borrower Actions and asserted counterclaims against Capital Funding (the “Cranston Borrower Counterclaims”).

WHEREAS, on July 26, 2024, Galloway removed the Galloway Borrower Actions and Galloway Guaranty Action to the Court, which remain pending at C.A. Nos. 24-871, 24-872, 24-874, and 24-875.

WHEREAS, on August 1, 2024, Galloway Borrower filed answers in the Galloway Borrower Actions and asserted counterclaims against Capital Funding (the “Galloway Borrower Counterclaims”).

WHEREAS, on August 23, 2024, Capital Funding filed an amended complaint against Menachem Tress and Elimelech Tress in the Galloway Guaranty Action.

WHEREAS, on August 27, 2024, the Court consolidated the Galloway Borrower Actions and Galloway Guaranty Action, which remain pending at C.A.

No. 24-871-RGA (the “Galloway Actions” and with the Cranston Actions, the “Actions”).

WHEREAS, on September 9, 2024, the Guarantors filed an answer in the Galloway Guaranty Action (the “Galloway Guarantor Answer”).

WHEREAS, on October 7, 2024, the Guarantors filed an answer in the Cranston Guaranty Action (the “Cranston Guarantor Answer”; together with the Cranston Borrower Counterclaims, the Galloway Borrower Counterclaims, and the Galloway Guarantor Answer, the “Counterclaims”).

WHEREAS, on October 9, 2024, the Court having conducted an initial Rule 16(b) scheduling conference, entered that certain Scheduling Order in the Cranston Actions at D.I. 31 and in the Galloway Actions at D.I. 32 (together, the “Scheduling Orders”).

WHEREAS, on December 20, 2024, the Parties entered into a forbearance agreement (the “Forbearance Agreement”) pursuant to which, the Parties agreed, among other things, that Defendants would satisfy the amounts owed to Capital Funding and to dismiss, subject to this Court’s approval, the Actions in their entirety without prejudice.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the Parties, subject to the Court’s approval, that:

1. Capital Funding’s claims brought forth in the Actions are dismissed

without prejudice, subject to Capital Funding's right to reinstate the Actions in the event of breach of the Forbearance Agreement or otherwise.

2. Cranston's answer, affirmative defenses, and counterclaims filed in C.A. No. 24-857-RGA [D.I. 7] is hereby amended so that the allegations in the note complaint are admitted by Cranston, and the affirmative defenses and counterclaims are dismissed with prejudice.

3. Cranston's answer, affirmative defenses, and counterclaims filed in C.A. No. 24-858-RGA [D.I. 7] is hereby amended so that the allegations in the foreclosure complaint are admitted by Cranston, and the affirmative defenses and counterclaims are dismissed with prejudice.

4. The Guarantors' answer and affirmative defenses filed in C.A. No. 24-857-RGA [D.I. 29] is hereby amended so that the allegations in the guaranty complaint are admitted, and the affirmative defenses are dismissed with prejudice.

5. Galloway's answer, affirmative defenses, and counterclaims filed in C.A. No. 24-872-RGA [D.I. 8] is hereby amended so that the allegations in the note complaint are admitted by Galloway, and the affirmative defenses and counterclaims are dismissed with prejudice.

6. Galloway's answer, affirmative defenses, and counterclaims filed in C.A. No. 24-874-RGA [D.I. 8] is hereby amended so that the allegations in the foreclosure complaint are admitted by Galloway, and the affirmative defenses and

counterclaims are dismissed with prejudice.

7. The Guarantors' answer and affirmative defenses filed in C.A. No. 24-871-RGA [D.I. 22] is hereby amended so that the allegations in the guaranty complaint are admitted, and the affirmative defenses are dismissed with prejudice.

**BENESCH, FRIEDLANDER,
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SO ORDERED this 30th day of December, 2024.

/s/ Richard G. Andrews

THE HONORABLE RICHARD G. ANDREWS